

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: WASHINGTON**LIENS AND ADJUSTMENTS OR RECOVERIES**

1. The state uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

The department shall consider the client's statement of intent to return home as controlling evidence.

2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR §433.36(f):

The department shall accept documentation from the client:

That the client's child lived in the client's home for two years immediately before the institutionalization of the client; and

Provided care to the client which allowed the client to remain in the client's home.

3. The State defines the terms below as follows:

*Estate* means:

- All real and personal property and any other assets that pass upon the client's death under the client's will or by intestate succession.
- An estate also includes:  
  
For a client who died after June 30, 1995 and before July 27, 1997, nonprobate assets, except property passing through a community property agreement; or  
  
For a client who died after July 27, 1997, nonprobate assets.
- The value of the estate shall be reduced by any valid liability against the deceased client's property at the time of death.

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3. Definitions (con't)

*Individual's home means:*

- A person's principal place of residence prior to the person's institutionalization.

*Equity interest in the home means:*

- Fair market value minus encumbrances.

*Residing in the home for at least one or two years on a continuous basis means:*

- The person has lived in the client's home as the principal place of residence for a period of at least one or two years immediately before the date of the client's admission to the institution and has resided there on a continuous basis since that time.

*Lawfully residing means:*

- The person lives in the state and intends to remain indefinitely.

*Discharge from the medical institution and return home means:*

- The person leaves the medical institution, returns home, and intends to remain in the home indefinitely.

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4. The state defines undue hardship as follows:

The department shall waive recovery when recovery would work an undue hardship. This waiver is limited to the period during which undue hardship exists.

Undue hardship exists when:

- The estate subject to adjustment or recovery is the sole income-producing asset of the heirs and income is limited; or
- Recovery would result in the impoverishment of one of the heirs; or
- Recovery would deprive an heir to the property of shelter and the heir lacks the financial means to obtain and maintain alternative shelter.

Undue hardship does not exist when:

- The adjustment or recovery of the client's cost of assistance would merely cause the client's family members inconvenience or restrict the family's lifestyle.
- The heir divests assets to qualify under the undue hardship provision.

The department shall not waive recovery based on undue hardship when a deceased client's assets were disregarded in connection with a long-term care insurance policy or contract.

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective.

*Standards:* Same as 4. above.

*Procedures:*

During the course of the department's investigation into the assets of the estate, information is provided to the department by heirs and others. When that information indicates the estate may be entitled to an undue hardship

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5. Standards and procedures (con't)

waiver, the department issues a written decision which includes a notice to the heirs of the right to contest the department's decision.

A person who requests the department to waive recovery in whole or in part, and who suffers a loss because the request was not granted, may contest the department's decision in an adjudicative proceeding. The department's decision shall state the requirements for an application for an adjudicative proceeding and state where assistance might be obtained to make an application. An application for an adjudicative proceeding must:

- Be in writing;
- State the basis for contesting the department's denial of the request to waive recovery;
- Be signed by the applicant and state the applicant's address and telephone number;
- Be served on the Office of Financial Recovery within twenty-eight days of the date the applicant received the department's decision denying the request for a waiver. An application filed up to thirty days late may be treated as if timely filed if the applicant shows good cause for filing late; and
- Be served on the Office of Financial Recovery in a manner which shows proof of receipt, such as personal service or certified mail, return receipt requested.

6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):

A total medical assistance payment of \$100 or less is waived as not cost-effective. Guidelines used to establish the cost-effectiveness of other cases follow:

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## 6. Cost effectiveness (cont.)

- Because the costs of estate administration may deplete an estate valued at \$3,000 or less, each such case is evaluated individually to determine cost-effectiveness.
- After consultation with the Attorney General's Office, claims rejected (disallowed) in probate court are evaluated individually to determine if initiating legal action is cost-effective.

## 7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

*Advance Notice Requirement:*

The department shall file liens, seek adjustment, or otherwise effect recovery for medical assistance correctly paid on behalf of a client.

When the department seeks to recover from a client's estate the cost of medical assistance provided to the client, prior to filing a lien against the deceased client's real property, the department shall provide notice to:

- The probate estate's personal representative, if any; or
- Any other person known to have title to the affected property.

Prior to filing a lien against any of the deceased client's property, the department shall provide ascertained titled property owners notice and an opportunity for an adjudicative proceeding. The department shall serve upon ascertained titled property owners a notice of intent to file lien, which shall state:

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## 7. Collection procedures (cont.)

- The deceased client's name, social security number, if known, date of birth, and date of death;
- The amount of medical assistance long-term care correctly paid on behalf of the deceased client the department seeks to recover;
- The department's intent to file a lien against the deceased client's real property to recover the medical assistance long-term care correctly paid on behalf of the deceased client;
- The county in which the property is located; and
- The ascertained titled property owner's right to contest the department's decision to file a lien by filing an application for an adjudicative proceeding with the Office of Financial Recovery; and provide an adjudicative proceeding to determine whether:
  - The amount of medical assistance long-term care correctly paid on behalf of the deceased client alleged by the department's notice of intent to file lien is correct; and
  - The deceased client had legal title to the property at the time of the client's death.

An application for an adjudicative proceeding must:

- Be in writing;
- State the basis for contesting the department's notice of intent to file lien;
- Be signed by the applicant and state the applicant's address and telephone number;
- Be served on the Office of Financial Recovery

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7. Collection procedures (cont.)

within twenty-eight days of the date the applicant received the department's notice of intent to file a lien. An application filed up to thirty days late may be treated as timely filed if the applicant shows good cause for filing late; and

- Be served on the Office of Financial Recovery in a manner in which shows proof of receipt, such as personal service or certified mail, return receipt requested.

Upon receipt of an application for an adjudicative proceeding, the department shall provide notice of the proceeding to all other ascertained titled property owners.

If no ascertained titled property owner files an application for the adjudicative proceeding within twenty-eight days of the date the department served a notice of intent to file lien, the department may file a lien against the deceased client's property for the amount of medical assistance long-term care correctly paid on behalf of the deceased client alleged in the notice of intent to file lien.

*Method of Applying for a Waiver, Hearing and Appeals Procedures, and Time Frames Involved:* Same as 4. and 5., above.